

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Negotiated Contracts for
Switched Access Services

ISSUE DATE: October 7, 2005

DOCKET NO. P-442, 5798, 5340, 5826, 5025,
5643, 443, 5323, 5668, 4661/C-04-235

ORDER DENYING MOTION TO DISMISS
AND GRANTING MOTION FOR A MORE
DEFINITE STATEMENT

PROCEDURAL HISTORY

On June 16, 2005, the Minnesota Department of Commerce (the Department) filed a complaint in this docket claiming that several competitive local exchange carriers (CLECs) and interexchange carriers (IXCs) had violated Minnesota's Telecommunications Act and related rules by entering into confidential, unfiled agreements under which CLECs charged IXCs rates different from those in tariffs on file with the Commission.

Subsequently, the Department reached settlement agreements with all carriers except AT&T Communications of the Midwest, Inc. (AT&T) and filed those agreements for Commission approval. On July 7, 2005, the Commission issued an Order approving the settlement agreements and dismissing the complaints against the carriers who were parties to them.¹

The Department's claims against AT&T, set forth in its April 25, 2005 comments, remained open. In the interests of administrative efficiency, the July 7 Order treated those comments as a complaint and required AT&T to respond to them within 20 days.

On July 27, 2005, AT&T filed a motion to dismiss, or in the alternative, a motion for a more definite statement. AT&T stated that the only statute or rule the April 25 comments claimed that AT&T had violated, Minn. Stat § 237.121 (a) (3), clearly did not apply. The Company therefore sought a dismissal as to that claim and a more definite statement as to any other statutory or rule violations the Department intended to raise in the course of the proceeding.

¹ Order Approving Stipulations, Dismissing Various Complaints, and Providing for Response to Additional Complaint, this docket.

On August 24, 2005, the Department filed a response stating that, while the agency's April 25 comments inadvertently cited Minn. Stat. § 237.121 (a) (3) instead Minn. Stat. § 237.121 (a) (4), AT&T recognized that the citation was a typographical error and fully understood the nature and scope of the Department's allegations. The Department opposed both motions.

On August 24, 2005, Qwest Corporation (Qwest) filed comments opposing the motion to dismiss, stating that the Department had raised serious allegations requiring investigation. Qwest also argued that it was unnecessary to require a more definite statement of the Department's allegations, but stated that it would not oppose any Commission decision to grant the motion for a more definite statement.

On September 14, 2005, AT&T filed final comments, and on September 29, 2005, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

Having examined the entire record and having heard the arguments of all parties, the Commission finds that this case will proceed more efficiently with a more definite statement of the Department's claims against AT&T.

The Department's original complaint was much broader than the one against AT&T that remains before the Commission. The original complaint involved more CLECs and IXC's, implicated more statutes and rules, and would have required more extensive fact-finding. While the July 7 Order attempted to differentiate between the original complaint and the one remaining against AT&T, the company's claims that it finds the juxtaposition of the two complaints confusing and worrisome are not without some substance.

While the July 7 decision to treat the Department's comments as a complaint was intended to expedite proceedings in this case, it is now clear that it cannot accomplish that goal. Having an amended complaint in hand will expedite proceedings much more effectively, and the Commission will require the Department to file a more definite statement of the claims it intends to prove in this case.

Finally, the Commission will deny AT&T's motion to dismiss, finding that the Department's inadvertent error in citing the applicable statutory provision – the basis for that motion – did not prejudice AT&T. That error, too, can be corrected through the filing of an amended complaint or a more definite statement.

The Commission will so order.

ORDER

1. The Commission hereby denies AT&T's motion to dismiss.
2. The Commission hereby grants AT&T's motion for a more definite statement.
3. Within 20 days of the date of this Order, the Department of Commerce shall file an amended complaint or other more definite statement of its claims against AT&T in this case.
4. Within 20 days of receipt of the amended complaint or other more definite statement described above, AT&T shall file and serve its answer.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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